

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Jason C. Schwartz
Direct: +1 202.955.8242
Fax: +1 202.530.9522
JSchwartz@gibsondunn.com

December 21, 2021

The Honorable Rachel P. Kovner
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Smalls v. Amazon.com Services LLC*, No. 1:20-cv-5492 (E.D.N.Y.)

Dear Judge Kovner:

Defendant Amazon.com Services LLC (“Amazon”) respectfully submits this letter to correct a statement I made during today’s hearing on Amazon’s motion to dismiss.

At the hearing, I explained that the Court may take judicial notice of public statements made by Plaintiff Christian Smalls regarding the topics covered in the Amended Complaint (but need not do so to rule in Amazon’s favor), noting the cases cited in our brief. *See* Amazon Mot. to Dismiss at 3 n.2 (citing *Staehr v. Hartford Servs. Grp., Inc.*, 547 F.3d 406, 424–25 (2d Cir. 2008); *Carcasole-Lacal v. Am. Airlines, Inc.*, 2003 WL 21525484, at *1 n.1 (E.D.N.Y. July 8, 2003)), ECF No. 21.

I also mentioned a recent decision in which Judge Sullivan took judicial notice of a video involving the plaintiff. I described the decision as taking judicial notice of a video of an incident at Madison Square Garden. My description was based on a mistaken recollection of which videos Judge Sullivan considered in connection with two separate motions. Specifically, on a motion to dismiss, Judge Sullivan took judicial notice of a video of a television interview that was referenced in the plaintiff’s complaint, but *declined* to take judicial notice of a separate video of the incident at Madison Square Garden. *Oakley v. Dolan*, 2020 WL 818920, at *4–6 (S.D.N.Y. Feb. 19, 2020), *aff’d in part on other grounds*, 833 F. App’x 896 (2d Cir. 2020). Judge Sullivan later considered the video of the incident at Madison Square Garden in the context of a subsequent opinion on a motion for summary judgment. *Oakley v. MSG Networks*, 2021 WL 5180229, at *1 (S.D.N.Y. Nov. 8, 2021), *appeal filed*, No. 21-2939 (2d Cir.) (Nov. 24, 2021).

I apologize for my mistake.

Respectfully submitted,

/s/ Jason C. Schwartz

Jason C. Schwartz*

GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
jschwartz@gibsondunn.com

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Mylan L. Denerstein
Zainab N. Ahmad
Gabrielle Levin
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
mdenerstein@gibsondunn.com
zahmad@gibsondunn.com
glevin@gibsondunn.com

** Pro hac vice*

Attorneys for Amazon.com Services LLC

cc: Counsel for Plaintiff (by ECF)